



S. 1927 - A bill to amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes.

Floor Situation

At this point, it is unclear what mechanism will provide for consideration of S. 1927. This legislation was introduced by Senator Mitch McConnell (R-KY) on August 1, 2007. The bill passed in the Senate by a vote of 60 - 28 on August 3, 2007.

S. 1927 is expected to be considered on the floor on August 4, 2007.

**Note: S. 1927 is virtually identical to H.R. 3321, which was introduced on August 2, 2007 by Rep. Hoekstra (R-MI), along with Republican Leader Boehner, Whip Roy Blunt, and Conference Chairman Adam Putnam, and was referred to the Committee on Intelligence and the Committee on the Judiciary, but has not been considered on the floor of the House of Representatives.*

Summary

Intelligence Gathering on Persons Outside of the United States: The bill clarifies that surveillance directed at persons reasonably believed to be outside the United States is not electronic surveillance subject to the Foreign Intelligence Surveillance Act. S. 1927 authorizes the Director of National Intelligence (DNI) and the Attorney General (AG) to authorize and obtain third party assistance for the acquisition of foreign intelligence information on persons believed to be outside of the United States for up to one year, if the DNI and AG make *determinations* including 1) the acquisition is from or with the assistance of a second party and 2) that the procedures in place to determine that the acquisition is in fact of foreign intelligence information are reviewed by the Foreign Intelligence Surveillance Court.

Certification of Determination that Intelligence Acquisition is Lawful: The bill requires the DNI and the AG to certify in writing, under oath, and with supporting affidavits, that each acquisition of foreign intelligence information under this act is lawful. The certification is not required to identify the specific facilities, places, or property at which surveillance is to be directed.

Expedited Certification Procedure for When Immediate Action is Required: The bill authorizes the DNI and the AG, when immediate government action is required, to

certify the acquisition of foreign intelligence information within 72 hours of when a *determination* is made.

Assistance from Communications Providers: The bill requires communications providers to supply assistance in a manner that protects the secrecy of the information. The bill also authorizes compensation for a person who provides information, facilities, or assistance.

Failure to Comply: The bill establishes that the government may invoke the aid of the Foreign Intelligence Surveillance Court with respect to any failure to comply with a directive to provide assistance in acquiring intelligence information will result in a order from the Foreign Intelligence Surveillance Court and the person may be held in contempt of court for failure to comply with a court order.

Procedure Review by the Foreign Intelligence Surveillance (FIS) Court: Within 120 days of enactment of this act, the Attorney General must submit to the FIS Court the procedures by which the government determines that intelligence information acquisitions under this act do not constitute electronic surveillance under the clarified definition. Within 180 days of enactment of this act the FIS Court shall assess the procedures and determine whether the Government's "determination is clearly erroneous."

**Note: IF the FIS Court finds the Government's determination to be "clearly erroneous," then it shall issue an order requiring the Government to submit new procedures within 30 days or to cease any intelligence information acquisitions under this act.*

Sunset: This bill is only effective for 180 days after the date of enactment.

Background

The Foreign Intelligence Surveillance Act (FISA) of 1978 created the framework for foreign intelligence gathering using electronic surveillance. The FISA law established two courts, the U.S. Foreign Intelligence Surveillance Court (FISC) and the U.S. Foreign Intelligence Surveillance Court of Review, to authorize these foreign intelligence gathering activities.

Technology, however, has progressed by leaps and bounds in the six years since the Sept. 11 attacks, let alone in the three decades since the FISA laws were crafted. The outdated FISA laws restrict our intelligence community from utilizing a key tool in fighting the war on terror and protecting our national security.

In 1978, almost all international calls, or long-haul communications, were made over the air and bounced off satellites wirelessly. Those communications did not require a warrant under the FISA statute.

To protect the civil liberties of Americans, FISA required warrants for any signals that went through a wire, which is how most short-haul communications were conducted at the time the law was enacted.

Today, the situation is reversed. Wholly international communications transmitted over a wire require a FISA warrant.

A significant intelligence gap has arisen because the FISA process cannot respond with speed and agility to potential threats.

It is difficult to compile enough information in a short period of time on a foreign person of interest to satisfy the FISA statute, and this is where the gap arises.

According to the Director of National Intelligence, Michael McConnell, “We are significantly burdened in capturing overseas communications of foreign terrorists planning to conduct attacks inside the United States. We must make the requested changes to protect our citizens and the nation. In today's threat environment, the FISA legislation is not agile enough to handle the community's and the country's intelligence needs.” ([Testimony to Senate Intelligence Committee, 5/1/07](#))

Rep. Heather Wilson (R-NM) has proposed narrowly-tailored legislation to close this loophole by allowing surveillance targeting foreign communications without a warrant.

S. 1927 is virtually identical to H.R. 3321, a bill introduced by Rep. Hoekstra (R-MI), along with Republican Leader Boehner, Whip Roy Blunt, and Conference Chairman Adam Putnam, to fix the FISA loophole.

During the 109th Congress, the House passed H.R. 5825, The Electronic Surveillance Modernization Act, which fundamentally modernized and enhanced FISA. The bill, however, never passed the Senate.

On August 3, 2007, the House rejected H.R. 3356, To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain electronic surveillance, the details of that vote ([Roll no. 821](#)), 2/3 majority required, are pasted below:

	YEAS	NAYS	PRES	NV
DEMOCRATIC	215	14		2
REPUBLICAN	3	193		6
INDEPENDENT				
TOTALS	218	207		8

Cost

At the time of publication, the Congressional Budget Office (CBO) did not have a score for this bill.

Staff Contact

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